

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 26, 2004

IN RE:

**PETITION OF CHATTANOOGA GAS COMPANY
FOR APPROVAL OF ADJUSTMENT OF ITS RATES
AND CHARGES AND REVISED TARIFF**

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**DOCKET NO.
04-00034**

**ORDER APPROVING AGREEMENT OF PARTIES REGARDING
EFFECTIVENESS OF RATES AND PROCEDURAL MATTERS**

This matter is before the Hearing Officer in this proceeding to hear preliminary matters prior to the Hearing on the *Petition of Chattanooga Gas Company for Approval of Adjustment of its Rates and Charges and Revised Tariff* (the “*Petition*”) and to set a procedural schedule to completion. On July 12, 2004, the Hearing Officer issued an *Order Reflecting Status of Action, Denying Consumer Advocate’s Motion to Extend Time and Establishing Procedural Schedule to Completion* which set a hearing on the merits of the *Petition* during the week of August 23, 2004. The Hearing Officer also issued orders on July 12, 2004 ruling on pending motions to compel and extend discovery.¹

In advance of the issuance of those Orders, on Friday, July 9, 2004, Chattanooga Gas Company (“Chattanooga”) filed with the Tennessee Regulatory Authority (the “Authority” or “TRA”) a letter advising the Authority that Chattanooga intended to place its proposed rates into effect “for billing cycles after August 1, 2004.” In that letter, Chattanooga asked the

¹ See, *Order Granting Motion to Compel and Request of Chattanooga Manufacturing Association to Serve Additional Discovery Requests* (July 12, 2004) and *Order Granting, in part, and Denying, in part, Consumer Advocate’s Motion for Leave to Serve Additional Discovery Requests* (July 12, 2004)

Authority to waive the requirement of a bond, to allow Chattanooga to recover certain "costs associated with recalculating and implementing any refund ordered by the TRA" as part of its rate case and to have its requests heard by the Authority during the July 26, 2004 Authority Conference. Chattanooga's requests were based on Tenn. Code Ann. § 65-5-203(b)(1) which permits an "increase, change or alteration" in rates, charges, schedules or classifications to be placed in effect six months after filing such "increase, change or alteration" with the Authority.²

After reviewing the July 9, 2004 filing by Chattanooga, the Hearing Officer determined that, to the extent that any of the rates, charges, schedules or classifications in the tariff filed on July 9, 2004 have not been on file with the Authority a full six (6) months, as required by Tenn. Code Ann. § 65-5-203(b)(1), such rates, charges, schedules or classifications cannot be put into effect "for billing cycles after August 1, 2004," and may not be put into effect until a full six month period has expired. The Hearing Officer directed Chattanooga to identify and segregate those rates, charges, schedules or classifications that would be eligible to go into effect on July 26, 2004 and those rates, charges, schedules or classifications that would not be eligible to go into effect on July 26, 2004 but at a later date. The Hearing Officer suspended until August 27, 2004 the effectiveness of those rates, charges, schedules or classifications contained in the tariff filed by Chattanooga on July 9,

² Tenn Code Ann § 65-5-203(b)(1) provides,

If the investigation has not been concluded and a final order made at the expiration of six (6) months from the date of any such increase, change or alteration, the utility may place the proposed increase, change or alteration, or any portion thereof, in effect at any time thereafter prior to the final authority decision thereon upon notifying the authority, in writing, of its intention so to do, provided, that the authority may require the utility to file with the authority a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority as hereinafter provided.

2004 that have not been on file with the Authority a full six (6) months on July 26, 2004.³

The Hearing Officer also issued an *Order Establishing Schedule for Responses to Chattanooga's Motion filed July 9, 2004 and Reply Thereto*, which set forth a schedule for the filing of responses to Chattanooga's request and of Chattanooga's reply to any such responses. Given the timing of the filing by Chattanooga and the method of service, the Hearing Officer extended the deadline for filing responses to Monday, July 19, 2004 and provided Chattanooga the opportunity to reply to any responses by Thursday, July 22, 2004.

On July 19, 2004, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") and the Chattanooga Manufacturers Association ("CMA") filed responses to Chattanooga's July 9, 2004 motion. Also, on July 19, 2004, Chattanooga filed a letter in compliance with the Hearing Officer's July 12, 2004 Order, identifying any rates, charges, schedules and classifications that would not be on file with the Authority for six months as of July 26, 2004. Chattanooga reiterated its intent to place in effect "all other rates ... for billing cycles on or after August 1, 2004."⁴

On July 21, 2004, the Hearing Officer held a telephonic status conference to discuss the July 19, 2004 filings of the parties and the impact of Chattanooga's request on the procedural schedule and hearing date. In addition to counsel for all parties, representatives for Chattanooga participated in the status conference. The discussions with the parties focused on adjusting the procedural schedule to move up the date of the hearing and conclusion of this docket in light of Chattanooga's July 9, 2004 filing. Several dates in advance of the week of August 23, 2004 were proposed as hearing dates; however, witness and attorney schedules

³ See, *Order Requiring Chattanooga Gas Company To Identify All Rates, Charges, Schedule Or Classification In Its July 9, 2004 Tariff On File For Six Months And Suspending The Effectiveness Of All Other Rates, Charges, Schedules Or Classification In The July 9, 2004 Tariff* (July 12, 2004)

⁴ Letter of D. Billye Sanders, Esq. to Pat Miller, Chairman of the TRA, p. 1 (July 19, 2004).

presented conflicts. The Hearing Officer stated that, through the issuance of numerous data requests and the partial completion of the procedural schedule, the TRA could begin the hearing during the week of July 26, 2004, by reserving rebuttal testimony for the hearing itself. The Hearing Officer stated that after the filing of the Intervenor's testimony on July 26, 2004, the Authority would be ready to begin the hearing on July 27 and render a decision on the merits of the *Petition* before August 1, 2004. The Intervenor agreed to proceed with the hearing on July 27, 28 and 29, 2004. The status conference was adjourned at the request of the representatives of Chattanooga to provide them an opportunity to discuss whether to move the date proposed for putting certain rates into effect to allow for a hearing in August instead of during the week of July 26, 2004.

On the afternoon of July 21, 2004, counsel for Chattanooga contacted the Hearing Officer and the Intervenor through electronic messaging with a proposal for moving to September 1, 2004 the date for putting rates into effect. Chattanooga proposed to proceed with the hearing during the week it was originally scheduled, except that it wanted to start the hearing on August 24 instead of August 23, 2004. Chattanooga's proposal incorporated the following components:

1. Chattanooga requested that the cost of capital testimony for all parties be presented on August 25, due to the unavailability of its cost of capital witness prior to the afternoon of August 24, 2004.

2. Chattanooga requested that transcripts of the hearing be available at the end of each day of the hearing. Chattanooga stated that it will pay the cost of having such transcripts available for itself, but suggested sharing the cost with other parties, if the court reporters will allow the parties to share the cost of such transcripts. Chattanooga will not pay for the transcripts provided to other parties.

3. Chattanooga requested that briefs be filed by all parties on September 10, 2004. In the event that the Directors determine not to require briefs, then Chattanooga requested that closing arguments be made by the parties on the afternoon of the next day following the conclusion of the testimony.

4. According to Chattanooga, if the rates go into effect for billing cycles beginning on or after September 1 and the TRA renders a decision by September 30, no refunds will be required because the bills for the cycles beginning September 1 will not be issued until October 1, 2004. Therefore, the customers' October 1 bills which would reflect gas service provided September 1 or thereafter, would also reflect the TRA's decision regarding the rates to be charged for the service. In this regard, Chattanooga proposed that, if the TRA's decision is not rendered by September 1, 2004, Chattanooga Gas not be required to post a bond for the rates that are placed into effect, subject to refund.

Chattanooga's proposal of July 21, 2004, was presented to the parties for their comment and approval. With the exception of several disputes regarding the order of witnesses during the hearing and the filing of responses to discovery requests, the Intervenor agreed, on July 22, 2004, to Chattanooga's proposal and to the Hearing Officer entering an order reflecting this agreement.

As a result of the agreement of the parties, the Status Conference scheduled for Friday, July 23, 2004 was cancelled and Chattanooga stated that it was withdrawing its request that this matter be considered by the panel assigned to this docket at the July 26, 2004 Authority Conference. Chattanooga stated that although the issue of the method of the calculation of interest, in the event of a refund to customers, was not discussed during the status conference, that issue will not need to be addressed if the TRA renders its decision by September 30, 2004. Notwithstanding the agreement of the parties, Chattanooga filed a Reply on July 22,

2004 to the responses of the Intervenors in which it outlined its arguments for putting the rates into effect without the requirement of a bond.⁵

IT IS THEREFORE ORDERED THAT:


1. This case will proceed in accordance with the procedural schedule set forth in the Hearing Officer's *Order Reflecting Status of Action, Denying Consumer Advocate's Motion to Extend Time and Establishing Procedural Schedule to Completion* dated July 12, 2004. At the request of the parties, the hearing will begin on August 24, 2004. The cost of capital testimony for all parties will be presented on August 25, due to the unavailability of Chattanooga's cost of capital witness prior to the afternoon of August 24, 2004.

2. The parties having agreed to the components of Chattanooga's proposal as set forth in paragraphs 1 through 4, the Hearing Officer approves and incorporates those components as a part of the procedures to be followed in the conduct of this proceeding.

3. Based on the representations made by Chattanooga and resulting agreement of the parties, Chattanooga Gas Company will not place its proposed rates in effect before September 1, 2004 and then, if placed in effect as of September 1, such rates will appear in billing for customers generated October 1, 2004. Any decision by the Authority by September 30, 2004 regarding Chattanooga's rates will be reflected the customers' October 1 bills.

⁵ In its Reply filed on July 22, 2004, Chattanooga makes statements that would indicate that the Hearing Officer "requested" that Chattanooga agree to delay its proposed August 1 date for putting rates into effect and that the Hearing Officer approved stipulations regarding the procedural schedule "in exchange for this accommodation." The Hearing Officer recalls that Chattanooga moved its date for putting rates into effect to September 1 only after the Hearing Officer announced that the Hearing would begin during the week of July 26, 2004. The proposal put forth by Chattanooga includes procedural matters to which all parties either assented as a part of the agreement reflected herein or agreed to resolve independent of this Order. Without the agreement of the parties and the change in the proposed effective date of the rates, the Hearing Officer was prepared to send out a Notice on July 21, 2004 setting the Hearing for July 27, 28, and 29, 2004 and announced his intent to do so to the parties during the Status Conference.

4. Based on the agreement of the parties reflected herein, the effectiveness of any tariffs filed or rates proposed by Chattanooga relating to the *Petition* in this docket is suspended through August 31, 2004.



J. Richard Collier
Hearing Officer